

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MARVIN SMITH SHAHEEN,

Plaintiff,

**Hon. Hugh B. Scott**

v.

04CV546

**Order**

JOHN BEAVER, et al.,

Defendants.

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Before the Court is defendants' motion to compel or alternatively to dismiss for failure to prosecute (Docket No. 7, August 29, 2005). Defendant Jeffrey Skinner served interrogatories upon plaintiff (Docket No. 6, Aug. 17, 2005). But there has been no Rule 16 scheduling conference or Scheduling Order entered. Discovery cannot begin until after the parties have conferred under Rule 26(f), see Fed. R. Civ. P. 26(d), and the Court entered a Scheduling Order. Since this case involves a pro se inmate plaintiff, the Court (once the case was referred) would have issued a Scheduling Order pursuant to the exception from the requirement of a scheduling conference in this Court's Local Civil Rule 16.1(a) for pro se prisoner civil rights actions (see also Fed. R. Civ. P. 16(b)). Recently, this case was referred to the undersigned by Chief Judge Arcara (Docket No. 8, Aug. 31, 2005).

Therefore, defendants' present motion is **dismissed without prejudice** because it is premature. The Court will enter a Scheduling Order and, if plaintiff fails to adhere to its deadlines or otherwise prosecute his claims, the Court will consider defendants' motion.

So Ordered.

s/HBS  
Hon. Hugh B. Scott  
United States Magistrate Judge

Dated: Buffalo, New York  
September 1, 2005